

**MINUTES OF THE GOVERNMENT RECORDS COUNCIL**  
Public Meeting of July 10, 2003

The meeting was called to order at 9:30 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meeting Act statement was read.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Matthew U. Watkins (designee of Commissioner Susan Bass Levin, Department of Community Affairs), Diane Schnoyers (designee of Commissioner William Librera, Department of Education), Virginia Hook and Bernard Spigner.

Absent: None.

Mr. Maltese read a resolution to convene in closed session to receive legal advice concerning various complaints filed with the Council including complaints scheduled for adjudication that day. Ms. Hook moved to adopt the resolution, which was seconded by Mr. Spigner. All members present approved the motion. The Council conducted a closed session between 9:38 a.m. and 10:45 a.m.

The Council reconvened in open session at 10:55 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Virginia Hook, Bernard Spigner, Diane Schnoyers, and Matthew U. Watkins

Absent: None.

Also Present: Deputy Attorney General Barbara Conklin, Deputy Attorney General Juliet Wyne, Acting Executive Director Marc Pfeiffer, and Assistant Executive Director Paul Dice.

Mr. Maltese opened the floor to Public Comment. No comments were made.

Mr. Maltese called for adoption of the public meeting minutes from June 12, 2003. Mr. Watkins moved to adopt the minutes as prepared with a second by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

Abstain: Ms. Schonyers.

Mr. Maltese called for adoption of the closed session minutes from June 12, 2003 meeting. Ms. Hook moved to adopt the minutes as prepared with a second by Mr. Watkins. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

Abstain: Ms. Schnoyers.

Mr. Pfeiffer provided the Council a copy of the Executive Director's report, and provided copies for public inspection. Mr. Pfeiffer stated that a copy of the Executive Director's report will be posted on the GRC website.

Mr. Pfeiffer noted that several late communications were received from the public on the proposed amendments to the Inquiry and Complaint Procedure of the Council. As a result of those comments, the Executive Director determined to withdraw the amendments from Council action today to allow for review and response to comments received.

### **Unfinished Business**

- **Complaint 2002-34, L.E. Fisher v. Township of Cedar Grove**

Mr. Pfeiffer noted that at the last meeting the motion on this case resulted in a tie vote. Mr. Pfeiffer explained that when the custodian first redacted information from an attorney voucher, no reason was provided and discussions then took place between the custodian and the requestor. The custodian's counsel later submitted to the Council a detailed certification explaining that the redactions were necessary to protect information protected by the attorney-client privilege.

Mr. Pfeiffer stated that he found the explanation adequate and recommended the complaint be dismissed. Ms. Conklin stated that the Council should decide: (1) whether the redactions contained attorney client privileged material as alleged and were, therefore, lawful under OPRA; and, (2) whether the custodian's original response to the request was adequate under OPRA.

Mr. Pfeiffer advised the Council that the complaint was filed in July 2002 and a Records Note regarding procedures for redacting text from records was not issued until August/September 2002. Mr. Maltese stated that he concurred with Judge Sweeney's view that legal bills should not contain attorney client privileged information. Mr. Watkins informed the Council that, to the contrary, governing bodies usually request that type of information to determine whether to pay an invoice. Mr. Watkins suggested that the Executive Director or the Division of Local Government Services advise local units that descriptions of legal discussions with clients or legal theories or mental impressions of attorneys should appear only on a supplement to the invoice and not the invoice itself.

After discussion, Mr. Watkins moved that the Council adopt the Executive Director's July 10 Findings and Recommendation that the information redacted was attorney-client privileged, that the redaction was lawful under OPRA; that the custodian provided a reason for the redaction as required under OPRA, and that the Complaint be dismissed with a request that the Executive

Director to quickly advise all local units of the need to remove attorney client privileged material from billing invoices onto a supplemental piece of paper. Ms. Hook seconded the motion. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

- **L.E. Fisher and Krisberg v. City of Paterson (Complaint 2002-46 and 55)**

Mr. Pfeiffer advised that the Council is still waiting for the Attorney General's legal advice. It is anticipated that advice will be provided at the next meeting.

- **Teeters v. DYFS (2002-6 and 2002-15)**

Mr. Pfeiffer noted that at the Chair's request, the Division of Law was asked to provide advice on the case. Ms. Conklin noted that in the event the Council concluded that it could not resolve the matter on the papers due to outstanding material questions of fact, a hearing would be required, either before the Council or before an Administrative Law Judge. Mr. Pfeiffer stated that he believed that there were questions of fact requiring a hearing and recommended that the matter be referred to Office of Administrative Law as a contested case by July 21 unless the Attorney General's office advised to the contrary by that time.

Ms. Hook moved to accept the Executive Director's recommendation with a second by Mr. Spigner. The motion was adopted on a call of ayes and nays as follows:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

Mr. Pfeiffer noted that the following cases are pending and no Council action is anticipated today.

- **Reda v. Township of West Milford (2002-58)**

Mr. Pfeiffer noted that the custodian's counsel recently submitted for staff review an itemized explanation for each of the e-mails claimed as privileged. Mr. Pfeiffer stated that he anticipates the matter would be ready for Council consideration by August.

- **Blue v. Township of Wall (2002-47)**

Mr. Pfeiffer noted legal advice was expected shortly and that the matter would likely be ready for Council consideration by August.

- **L.E. Fisher v. Township of Fairfield (Essex) (2002-39)**

Mr. Pfeiffer noted that the Custodian filed a certification and explanation for the redaction of the legal vouchers and that the requestor's filing is currently under legal review.

- **Inquiry and Complaint Procedure**

Mr. Pfeiffer advised the Council that many comments were received on the proposed amendments to Council procedure and that staff is reviewing them.

- **Approval of Proposed By-Laws**

Mr. Pfeiffer summarized the proposed changes to the bylaws as follows: (1) eliminate the first of two public comment periods and (2) replace "old and new business" with "case adjudication." Mr. Spigner moved to eliminate the first public comment period and replace "old and new business" with "case adjudication," with a second by Ms. Hook. The motion was adopted on a call of ayes and nays as follows:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

### **New Business**

- **2002-70 Zaccaria v. Township of Wall**

Mr. Pfeiffer explained that the complaint concerned a request was for test results done by the Township engineer on an underground pipe at a housing development. While the documents were ultimately provided 60 days after the request, the custodian initially denied access because the records were not stored in the municipal building.

Mr. Pfeiffer recommended dismissing the portion of the Complaint seeking access to the record and ask that the custodian explain the delay in producing the records. After discussion, matter, Ms. Hook moved to adopt the Findings and Recommendations of the Executive Director; to dismiss the portion of the Complaint seeking access to the records; to reserve decision on the issue of custodian penalty under OPRA; and to require the Custodian to submit to requestor and Council by July 31, 2003: (1) a full explanation why access to the records was not afforded within seven business days of receipt of the OPRA request; and, (2) a description of the training and education the custodian has received to date regarding OPRA. Mr. Watkins seconded the motion. The motion was adopted on a call of ayes and nays as follows:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

- **2002-86 Russomano v. Township of Edison**

Mr. Pfeiffer explained that the complaint involves a deficient response to a request seeking answers to questions concerning the Township of Edison's affordable housing obligation under

the State's Fair Housing Act. The custodian provided an initial response by telephone and letter indicating that the Township Administrator would respond to the request at a later, unspecified date. It was not until October 28, 2002 that the requestor received a written response that the Township rejected the "request" because it sought information and not government records.

Mr. Pfeiffer observed that the custodian was still obligated to respond to the requester within seven business days of receipt of the request, rejecting the request or advising the requestor of the specific date by which a response would be provided. Since the custodian's omission in this instance appeared to Mr. Pfeiffer not to have been a willful or knowing violation of OPRA, he recommended that the Complaint be dismissed without penalty to the custodian. Ms. Wyne confirmed that the "request" was a series of questions not a list of records. Ms. Conklin stated that the requestor had submitted two subsequent OPRA requests concerning Edison's affordable housing plan that were not part of this Complaint.

Ms. Hook moved to adopt the Findings and Recommendations of the Executive Director; to dismiss the Complaint; and to warn the custodian that within seven business days of receipt of OPRA requests the custodian must either provide access to records or state the specific date by which a response to the request will be provided. Ms. Schonyers seconded the motion. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

- **2003-28 Cottrell v. Borough of Glassboro**

Mr. Pfeiffer explained that the complaint involves a dispute between the requestor and the custodian challenged the custodian's behavior towards the requestor in fulfilling a records request. The request was for a copy of a petition on file with the clerk and the custodian's decision to compel the requestor to pay for a complete copy of the minutes of two Borough Council meetings when the requestor sought only specific pages. The requestor asked for action taken against the custodian due to an alleged verbal dispute, which was contradicted by the custodian.

As the documents were provided in a timely basis and the requestor received a refund on her money for the pages of the minutes she did not request, Mr. Pfeiffer did not see a basis on which the Council would need to fine the custodian and that, therefore, the complaint should be dismissed. With regard to action against the custodian, Mr. Pfeiffer advised that he was withdrawing his recommendation to ask the governing body review the custodian's action in handling the OPRA request. After discussion, the Council concluded that a copy of Final Decisions could be sent to governing bodies, but that in this case no formal communication requesting review was appropriate. Ms. Schonyers moved to accept the Executive Director's Findings and Recommendations and dismiss the complaint. Mr. Spigner seconded the motion. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner, Mr. Watkins and Mr. Maltese.

Nays: None.

**Public Comment**

Joseph Tyrell, member of New Jersey Foundation for Open Government (FOG), questioned the Council on facts underlying *Zaccaria v. Wall Township* and suggested that custodians who delayed in providing access to records should be fined. In connection with another matter not pending before the Council, Mr. Tyrell stated that a group of Hoboken residents had requested a list of city of employees who are permitted to take city cars home. The City denied the request on the grounds such a list did not exist. Mr. Pfeiffer stated that the Council was not aware of such a circumstance, however, there should be records that clearly state that information that the residents requested. Mr. Pfeiffer further stated that if the Council received an inquiry in this matter, Council staff would work with the requestor and the custodian to resolve the matter.

Donna Synder, Administrator/Municipal Clerk of Mansfield Township (Burlington County) and member New Jersey Municipal Clerks Association, stated that the clerks were aware of the need to comply with Council directive and decisions and that she would advise Association members regarding the Council Decisions and the issues discussed at today's meeting.

Hearing no one further, Mr. Maltese closed the public comment period.

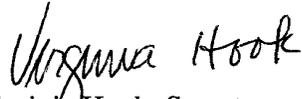
Several members then commented on the Council's complaint handling process and the fact that while there have been delays in the past, progress was being made to reduce the backlog of older complaints.

Mr. Watkins moved to adjourn the meeting with a second Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Watkins, Ms. Schonyers and Mr. Maltese.  
Nays: None.

Mr. Maltese adjourned the meeting 12:13 p.m.

**Respectfully submitted,**

  
Virginia Hook, Secretary

Dated: August 14, 2003